

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROBIN BETHANY,

Plaintiff,

vs.

OMNI AIR INTERNATIONAL,

Defendant.

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SA-20-CV-00209-XR

ORDER

Before the Court in the above-styled cause of action are Plaintiff's *pro se* Application to Proceed in District Court without Prepaying Fees or Costs and proposed civil Complaint, filed February 21, 2020 [#1]. The motion was automatically referred to the undersigned upon filing, and the undersigned has authority to enter this order pursuant to 28 U.S.C. § 636(b)(1)(A). By her motion, Plaintiff seeks leave to proceed in forma pauperis ("IFP") based on her inability to afford court fees and costs. Having considered the motion and documentation provided by Plaintiff, the Court will grant the motion to proceed IFP and order service of Plaintiff's Complaint.

All parties instituting any civil action, suit, or proceeding in a district court of the United States, except an application for a writ of habeas corpus, must pay a filing fee of \$350, as well as an administrative fee.¹ See 28 U.S.C. § 1914(a). Plaintiff's motion to proceed IFP includes her income and asset information, which indicates that Plaintiff is employed but is currently on medical leave due to seizures and ongoing psychological care and not receiving any income from

¹ The administrative fee, which is currently \$50, is waived for plaintiffs who are granted IFP status. See *District Court Miscellaneous Fee Schedule*, available at <http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>.

her employment. Plaintiff has submitted her 2019 income tax return with her IFP application, and her gross income for 2019 was \$12,105. Although Plaintiff receives monthly income from an annuity, she only has \$6,000 in savings and carries credit card debt in the amount of \$20,000. The information demonstrates that Plaintiff does not have sufficient monthly resources available to pay the filing fee, and the Court will grant the motion to proceed IFP.

Pursuant to the Court's October 8, 2019 Standing Order, the undersigned reviewed Plaintiff's proposed Complaint for frivolousness. Plaintiff has sued her current employer, Omni Air International, under Title VII of the Civil Rights Act of 1964 for disability discrimination and for harassment. Plaintiff's Complaint alleges that she filed charges against Defendant with the Equal Employment Opportunity Commission ("EEOC") on March 3, 2019, and the EEOC issued a Right to Sue Letter on November 25, 2019. Plaintiff included a copy of her Charge of Discrimination and the Right to Sue letter with her proposed Complaint. Although Plaintiff selected Title VII as the statutory basis of her lawsuit, her factual allegations describe disability discrimination, not discrimination based on a protected characteristic under Title VII. Plaintiff's EEOC Charge exhausted her claim for disability discrimination and cites to the Americans with Disabilities Act.

Accordingly, Plaintiff's proposed Complaint demonstrates that she properly exhausted her administrative remedies and timely filed this federal action within 90 days of receiving her Right to Sue Letter. *See* 42 U.S.C. § 2000e-5(f)(1). The Court additionally finds that Plaintiff's proposed Complaint involves at least one non-frivolous claim. Therefore, Defendant should be served with this lawsuit.

IT IS THEREFORE ORDERED that Plaintiff's *pro se* Application to Proceed in District Court without Prepaying Fees or Costs [#1] is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Complaint [#1-1] shall be filed by the Clerk without prepayment of fees, costs or the giving of security therefore, and the Clerk shall, until further Order of this Court, waive the collection of any other fees or costs from Plaintiff.

IT IS FURTHER ORDERED that, if not already accomplished, within ten (10) days of the date of this Order, Plaintiff shall submit to the Clerk's Office a fully completed United States Marshal Service Form 285, including fully complete addresses, for each Defendant required to be served and the United States Marshal's Service shall serve each Defendant with a copy of the Complaint and a copy of this order by certified mail, return receipt requested.

SIGNED this 5th day of March, 2020.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE